2018 ADVANCED DUI

September 10 - 13, 2018
Phoenix, Arizona

DUI SENTENCING TIPS AND REMINDERS

Presented by:

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000072-001 DT 03/27/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT
C. Avena
Deputy

STATE OF ARIZONA

RYAN SHERMAN

v.

DAVID WALKER II (001)

BRIAN DOUGLAS SLOAN

PHX CITY MUNICIPAL COURT
PHX MUNICIPAL PRESIDING JUDGE
REMAND DESK-LCA-CCC

MINUTE ENTRY

Lower Court Case No. 100087858

The State seeks reversal of the trial court's sentencing order crediting David Walker with one day of time served. For the reasons that follow, the Court reverses the trial court's order and remands for further proceedings consistent with this decision.

I. FACTS AND PROCEDURAL BACKGROUND

Police arrested Walker for Driving Under the Influence ("DUI"), a class 1 misdemeanor. Police transported Walker to the DUI van, administered a chemical test, and fingerprinted and photographed him. Because he was a minor at the time of his arrest, police also called Walker's mother and waited for her arrival. Walker was cited and released.

Walker subsequently pled guilty to one count of DUI. At sentencing, he argued that the approximately one and one-half hours he spent detained during the DUI investigation was

tantamount to time spent in jail, and asked the trial court to give him credit for one day served in jail. Over the State's objection, the trial court gave Walker credit for one day served.

The State timely appealed. This Court has jurisdiction pursuant to ARIZ. CONST. Art. 6, § 16, and A.R.S. §§ 12–124(A) and 22-371(A).

II. ISSUES

1. Is the State entitled to bring this action as an appeal pursuant to A.R.S. 13-4032?

2. Did the trial court properly give Walker credit for one day of time served for time spent detained during the DUI investigation?

III. STANDARD OF REVIEW

When a sentence is within the statutory limits, it is valid absent a clear abuse of discretion. *State v. Cagnina*, 113 Ariz. 387, 388 (1976). "An abuse of discretion includes an error of law." *State v. Burgett*, 226 Ariz. 85, 86, ¶ 1 (App. 2010).

IV. LEGAL ANALYSIS

1. The State is entitled to bring this appeal.

The State may appeal "[a] sentence on the grounds that it is illegal, . . ." A.R.S. § 13-4032(5). Walker argues that this statute does not apply, because the trial court imposed a legal sentence when it imposed the mandatory minimum jail sentence.

This argument ignores the fact that while the trial court imposed the required jail sentence, it did not require Walker to spend any time in jail. While the trial court may have pronounced a legal sentence, the question is whether the sentence actually imposed was legal. Moreover, the Court of Appeals has held that the State is entitled to challenge "incorrect pre-sentence incarceration credit on appeal." *State v. Lee*, 160 Ariz. 323, 324 (App. 1989) (citing to A.R.S. § 13-4032(5)).

Therefore, the State has the right to appeal, and this Court has jurisdiction to hear that appeal.

2. The trial court abused its discretion when it gave Walker credit for time not spent in custody.

Under Arizona law, a defendant is credited for "[a]ll time actually spent in custody pursuant to an offense . . ." A.R.S. § 13-712(B). "Arizona court decisions have consistently interpreted the 'in custody' requirement of this statute to mean actual or constructive control of prison or jail authorities." *State v. Reynolds*, 170 Ariz. 233, 235 (1992). In *Reynolds*, our Supreme Court concluded that "the legislature intended the words 'in custody' to mean actual incarceration in a prison or jail and more than simply a restraint on freedom as onerous as jail or prison would be." *Id.*

Thus, for example, time spent in drug rehabilitation does not count toward time spent "in custody." *Id.* at 237. More applicable to the facts of this case, neither does time after arrest but before booking into jail. *State v. Cereceres*, 166 Ariz. 14, 16 (App. 1990). "Although an arrest restrains an individual's freedom, it does not approximate the restraint characteristic of incarceration." *Id.*

Despite the clear mandate of case law, Walker argues that this Court should nevertheless apply the rule of lenity, and find that he was entitled to credit for time spent in police detention, despite the fact that he spent no time in jail. The rule of lenity applies when "a sentencing statute is susceptible to more than one interpretation . . ." *Cawley v. Arizona Bd. of Pardons & Paroles*, 145 Ariz. 387, 388 (App. 1984). But here, there is no ambiguity, and thus, the rule of lenity is inapplicable. *State v. Story*, 206 Ariz. 47, 51, ¶ 15 (App. 2003).

Instead, the rule set forth by the appellate courts is a "'bright line rule'" intended to "be applied to the myriad of situations arising under the statute." *Cereceres*, supra, 166 Ariz. at 16. By failing to apply that "bright line" rule, the trial court committed a clear abuse of its discretion.

Accordingly, the State is entitled to relief, and Walker is required to serve one day in jail on remand.

V. CONCLUSION

Therefore,

IT IS ORDERED reversing the order of the Phoenix Municipal Court giving Walker credit for one day of time served.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings, including entry of a sentencing order requiring Walker to serve one day in custody.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Patricia A. Starr
THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. **Therefore, you will have to deliver to the Judge a conformed courtesy copy of any new filings.**

Michael K. Jeanes, Clerk of Court
*** Filed ***
04/02/2014 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000549-001 DT 03/31/2014

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

GARY L SHUPE

v.

SILBINA RAMIREZ LUNA (001)

RICK POSTER

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case Number 14252134 and 14211307.

Defendant-Appellant Silbina Ramirez Luna (Defendant) was convicted in Phoenix Municipal Court of causing serious physical injury or death in the commission of a traffic offense. Defendant contends the trial court erred in ordering the amount of restitution it did. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On September 17, 2011, Defendant turned left into the path of an oncoming motorcycle, which resulted in severe injuries to the driver, Nicholas Buzzell, and the passenger, Brittany Monahan. (R.T. of Apr. 17, 2012, at 18–20.) Nicholas died a short time later after being transported to Maricopa County Medical Center and incurring certain medical bills. (*Id.* at 19.) Brittany survived, but accumulated a considerable amount in medical bills. (*Id.*)

As a result of this collision, Defendant was cited for failure to stop at a traffic signal, A.R.S. § 28–645(A)(3)(a); failure to yield while turning left, A.R.S. § 28–772; no proof of insurance, A.R.S. § 28–4135(C); and causing serious physical injury or death, A.R.S. § 28–672(A) (class 3 misdemeanor). Defendant entered a plea of guilty to the charge of causing serious physical injury or death, and entered a plea of responsible for the three civil traffic violations. (R.T. of Apr. 17, 2012, at 4, 11–20.) The trial court stated it would hold sentencing and the award of restitution at a future time. (*Id.* at 11.) Defendant acknowledged she was giving up the right to have the proceedings reviewed by means of a direct appeal, and could seek review only by means of a Rule 32 petition for post-conviction relief. (*Id.* at 17.) The trial court found there was a factual basis for the guilty plea, and that Defendant knowingly, voluntarily, and intelligently made the plea. (*Id.* at 20.) The parties stipulated that the victims suffered damages in excess of $10,000

each, and there was a discussion whether the statute limited the restitution to $10,000 per victim or per accident, and whether any such limitation was constitutional. (*Id.* at 11–12, 35.) The trial court then continued the matter to July 12, 2012. (*Id.* at 35.)

At the next hearing, the trial court stated it did not believe the statute limited the restitution to a total of $10,000 per case, and was of the opinion that the statute imposed a limit of $10,000 per victim. (R.T. of Jul. 12, 2012, at 4–6.) For Nicholas Buzzell, it said it would order restitution payments of $1,832.42 and $10,000 for medical expenses, $967.75 for ambulance expenses, and $1,210.55 for funeral expenses. (*Id.* at 8–9, 13, 24.) For Brittany Monahan, it said it would order a restitution payment of $10,000 to her mother, Mitzi Monahan, for medical expenses. (*Id.* at 13, 24.) The trial court then continued the matter to August 23, 2012. (*Id.* at 27.)

At the next hearing, the trial court restated its opinion that, if there is a limit of $10,000, it is per victim. (R.T. of Aug. 23, 2012, at 21, 55.) Mitzi Monahan testified about what she had paid for Brittany's medical expenses. (*Id.* at 29–50.) Brittany Monahan testified about her injuries and the resulting medical and other expenses. (*Id.* at 50–53.) The trial court ordered the parties to submit further briefing on the issues by September 7, 2012. (*Id.* at 53–54, 55–68.)

At the next hearing, the trial court ruled A.R.S. § 28–672(G), which provides the restitution awarded shall not exceed $10,000, was unconstitutional. (R.T. of Dec. 21, 2012, at 5.) It then discussed who should be considered "victims." (*Id.* at 5–6.) It further discussed the restitution figures it had received. (*Id.* at 12–13.) The trial court then continued the matter for sentencing. (*Id.* at 27–29.)

The trial court subsequently imposed sentence. (R.T. of May 23, 2013, at 7–12, 22.) It imposed restitution totaling $307,304.99 as set forth in its Minute Entries of December 7, 2012, and May 21, 2013. (R.T. of May 23, 2013, at 8.) On June 6, 2013, Defendant filed a timely notice of appeal, and on July 1, 2013, and July 10, 2013, filed amended notices of appeal. This Court has jurisdiction to resolve the issues presented pursuant to ARIZ. CONST. Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES.

A. *Does this Court have jurisdiction to resolve the issues by means of a direct appeal.*

Defendant pled guilty to the charge and has raised on appeal three issues involving the amount of restitution ordered. An appellate court has an independent duty to consider the issue of its jurisdiction on its own motion. *State v. Avila*, 147 Ariz. 330, 333–34, 710 P.d. 440, 443–44 (1985); *Fields v. Oates*, 230 Ariz. 411, 286 P.3d 160, ¶ 7 (Ct. App. 2012). In *Hoffman v. Chandler*, 231 Ariz. 362, 295 P.3d 939 (2013), Hoffman pled no contest pursuant to a plea agreement and agreed to pay restitution:

> Pursuant to a plea agreement, Hoffman pleaded no contest to driving under the influence (DUI) and, among other things, agreed to pay restitution up to $53,653.45.

Hoffman at ¶ 2. The trial court sentenced Hoffman, but did not resolve the issue of restitution. The trial court held a restitution hearing 3 months later and ordered Hoffman to pay $40,933.45 in restitution, and Hoffman then appealed the order of restitution. The court held the order of restitution was part of the sentence under A.R.S. § 13–4033(A)(4) and not an "order made after judgment affecting the substantial rights of the party" under A.R.S. § 13–4033(A)(3), thus Hoffman was precluded by A.R.S. § 13–4033(B) from presenting the issue on direct appeal. *Hoffman* at ¶¶ 9–11. Under the reasoning in *Hoffman,* it would appear Defendant could not raise with this Court on direct appeal the restitution issues she presents.

There is a difference between the wording in the rule of criminal procedure, which refers to a defendant's pleading guilty, and the wording of the statute, which refers to a judgment or sentence entered pursuant to a plea agreement. The applicable statute provides as follows:

> A. An appeal may be taken by the defendant only from:
>
> 1. A final judgment of conviction or verdict of guilty except insane.
>
> 2. An order denying a motion for a new trial.
>
> 3. An order made after judgment affecting the substantial rights of the party.
>
> 4. A sentence on the grounds that it is illegal or excessive.
>
> B. In noncapital cases a defendant may not appeal from ***a judgment or sentence that is entered pursuant to a plea agreement*** or an admission to a probation violation.

A.R.S. § 13–4033(A) & (B) (emphasis added). The applicable rule of criminal procedure provides as follows:

> **e. Waiver of Appeal.** By ***pleading guilty or no contest*** in a noncapital case, a defendant waives the right to have the appellate courts review the proceedings by way of direct appeal, and may seek review only by filing a petition for post-conviction relief pursuant to Rule 32 and, if denied, a petition for review.

Rule 17.1(e), ARIZ. R. CRIM. P. (emphasis added). In *Hoffman,* the court held as follows:

> We today hold that subsection (B) bars a defendant from directly appealing a contested post-judgment restitution order entered pursuant to a ***plea agreement*** that contemplated payment of restitution up to a capped amount. Any appellate review must be obtained through post-conviction relief proceedings.

Hoffman at ¶ 1 (emphasis added). The argument in the present case is that *Hoffman* was precluded from review on direct appeal because he pled pursuant to a plea agreement, but because Defendant pled guilty to the charge without a written plea agreement, A.R.S. § 13–4033(B) does not preclude her from seeking review by means of direct appeal.

Although A.R.S. § 13–4033(B) provides for the waiver of review by direct appeal for a judgment or sentence entered pursuant to a plea agreement, it does not define what is meant by "plea agreement." The Arizona Rules of Criminal Procedure provide the parties may negotiate an agreement to resolve a criminal proceeding by means of a guilty plea:

> **a. Plea Negotiations.** The parties may negotiate concerning, and reach an agreement on, any aspect of the case. . . .

Rule 17.4(a), ARIZ. R. CRIM. P. Once the parties have agreed on the terms of the guilty plea, the rules provide for a written plea agreement document:

> **b. Plea Agreement.** The terms of a plea agreement shall be reduced to writing and signed by the defendant, his counsel, if any, and the prosecutor. An agreement may be revoked by any party prior to its acceptance by the court.

Rule 17.4(b), ARIZ. R. CRIM. P. Clearly if a defendant has signed a written plea agreement document, the defendant will have waived review by direct appeal pursuant to A.R.S. § 13–4033(B). But even when the parties have negotiated the terms of a plea agreement, the failure to reduce that agreement to a written document does not warrant reversal of the conviction absent a showing of prejudice to the defendant. *State v. Morris,* 115 Ariz. 127, 127, 564 P.d. 78, 78 (1977). Further, if the parties do not prepare a written plea agreement document, it is incumbent on the defendant to object, and if the defendant does not object, the defendant will have waived any objection. *State v. Cornwall,* 114 Ariz. 550, 552–53, 562 P.d. 723, 725–26 (1977). It would therefore appear that, if the parties have negotiated the terms of a plea agreement but have not reduced that agreement to a written document, the resulting judgment or sentence will still be considered to have been entered pursuant to a plea agreement, and thus the defendant will have waived review by direct appeal pursuant to A.R.S. § 13–4033(B).

In the situation when the defendant pleads guilty to the charge or charges, there is no requirement that there be a written plea agreement document. *State v. Rose,* 231 Ariz. 500, 297 P.3d 906, ¶¶ 1, 6, 18 (2013); *State v. Mitchell,* 27 Ariz. App. 309, 311, 554 P.2d. 905, 907 (1976). Further, a defendant has the right to plead guilty to the charge or charges even when the prosecutor does not agree and opposes that guilty plea. *Alejandro v. Harrison,* 223 Ariz. 21, 219 P.3d 231, ¶¶ 7–11 (Ct. App. 2009). For a defendant who pleads guilty to the charge or charges, the question then is whether the resulting judgment and sentence could be considered to have been entered pursuant to a plea agreement, and thus result in the waiver of review by direct appeal pursuant to A.R.S. § 13–4033(B).

This Court concludes, for a defendant who pleads guilty to the charge or charges, the resulting judgment and sentence would be considered to have been entered pursuant to a plea agreement even when there is no written plea agreement document. Although the trial court does not need the prosecutor's agreement when a defendant wants to plead guilty to the charge or charges, the prosecutor is still required by the Arizona Constitution to confer with the victim before any disposition of the case. ARIZ. CONST. Art. 2, § 2.1(A)(6). This means the trial court could not go forward with a plea to the charge or charges until such time as the prosecutor has conferred with the victim and advised the victim about the outcome of the case. Further, even though a defendant does not need the prosecutor's agreement to plead guilty to the charge or charges, the defendant still must enter into an agreement with the trial court. When a defendant pleads guilty,

whether it is to the charge or charges or some lesser charge, the defendant must waive certain constitutional rights, such as the right to remain silent, the right to a jury trial, the right to call witnesses, and the right to cross-examine the witnesses who testify against the defendant. Because a defendant must agree to waive those rights, any plea of guilty would be considered to be pursuant to a plea.

It appears the Arizona Supreme Court has recognized this fact because, as noted above, the applicable rule of criminal procedure provides a defendant waives the right to a direct appeal by pleading guilty or no contest in a noncapital case, and that rules says nothing about a written plea agreement. Thus, when a defendant pleads guilty to the charge or charges or some lesser charge, the defendant waives the right to a direct appeal.

In the present matter, Defendant's attorney stipulated that each victim suffered losses in excess of $10,000. (R.T. of Apr. 17, 2012, at 11.) The trial court advised Defendant of the mandatory minimum sentence and the maximum possible sentence for the various offenses. (*Id.* at 13–14.) Defendant said she understood those possible ranges of sentence and the required advisements, and said she wished to proceed further with the change of plea. (*Id.* at 14–16.) She said she understood the constitutional rights to which she was entitled if she went to trial and agreed to give up those rights. (*Id.* at 16–17.) The trial court also advised her she would be giving up the right to have the proceedings reviewed by direct appeal and that she would have to file a Rule 32 petition for post-conviction relief to obtain appellate review. (*Id.* at 17.) After finding Defendant knowingly, voluntarily, and intelligently agreed to all these conditions, the trial court accepted Defendant's plea of guilty. (*Id.* at 20.) This Court therefore concludes Defendant pled guilty pursuant to a plea agreement as contemplated by A.R.S. § 13–4033(B), and has thus waived the right to review by direct appeal. This Court therefore does not have jurisdiction to consider the issues presented by means of a direct appeal.

B. *May this Court resolve the issues by means of a special action.*

Although Defendant has waived the right to have this Court resolve the issues by means of a direct appeal, the procedure of special actions is still available. Special action review is available when a party does not have an equally plain, speedy, and adequate remedy. *State v. Bernini (Lopez)*, 230 Ariz. 223, 282 P.3d 424, ¶¶ 4–5 (Ct. App. 2012) (trial court granted defendant's motion to dismiss state's allegation of a prior conviction for crime of violence, which would have precluded probation on drug possession offense; court stated it was unclear under the current state of law whether state had remedy by appeal, but any remedy by appeal would not be equally plain compared to remedy by special action, and thus accepted special action jurisdiction). In the present case, Defendant has the right to have review of the proceedings by filing a petition for post-conviction relief, but this Court concludes that proceeding would not be a plain or speedy remedy and would be a waste of judicial resources. The parties have already thoroughly briefed and argued these issues with the trial court, and the trial court has made its ruling. The parties have now thoroughly briefed and argued these issues with this Court. This Court concludes it

would be a waste of judicial resources to require Defendant (1) to return to the municipal court, (2) file a petition for post-conviction relief raising the issues already presented to the trial court, (3) have the trial court again make the same ruling it has already made, (4) have Defendant file a petition for review, and (5) have the parties again brief the same issues. Because that could potentially add another year to these proceedings, this Court will exercise its special action jurisdiction and consider these issues pursuant to that proceeding.

C. *Is the $10,000 limit contained in A.R.S. § 28–672(G) unconstitutional.*

Defendant contends the trial court erred in concluding the $10,000 limit contained in A.R.S. § 28–672(G) was unconstitutional. That statute provides as follows:

> Restitution awarded pursuant to § 13–603 as a result of a violation of this section shall not exceed $10,000.

A.R.S. § 28–672(G). The Victims' Bill of Rights (VBR) in the Arizona Constitution provides as follows:

> A. To preserve and protect victims' rights to justice and due process, a victim of crime has a right:
>
> . . . .
>
> 8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.

ARIZ. CONST. Art. 2, § 2.1(A)(8). The VBR thus gives to a victim the right to receive restitution without limitation.

A similar situation occurred in *State v. Roscoe,* 185 Ariz. 68, 912 P.2d 1297 (1996). That case dealt with A.R.S. § 13–4433(F), which excluded from the definition of "victim" a peace officer when the "peace officer is acting in the scope of his official duties." The Arizona Supreme Court noted the VBR contained no such limitation, and thus held that limitation imposed by A.R.S. § 13–4433(F) was unconstitutional. *Roscoe,* 185 Ariz. at 70–74, 912 P.2d at 1299–1303. Similarly, *State ex rel. Thomas v. Klein (Simpson),* 214 Ariz. 205, 150 P.3d 778 (Ct. App. 2007), dealt with the definition of a "victim." The VBR defined "victim" as "a person against whom the criminal offense had been committed . . . ." ARIZ. CONST. Art. 2, § 2.1(C). At the time of the enactment of the VBR in 1990, the Arizona statute defined a "crime" as a "misdemeanor or felony." A.R.S. § 13–105(5) [now A.R.S. § 13–105(7)]. In 1992, the Arizona Legislature amended the Implementation Act to provide a criminal offense was either a felony or a "misdemeanor involving physical injury, the threat of physical injury or a sexual offense." A.R.S. § 13–4401(6). In *Klein (Simpson),* the court held the effect of that amendment was to exclude from the category of "victims" under the VBR those persons against whom a misdemeanor was committed that did not involve physical injury, the threat of physical injury, or a sexual offense, and thus that limitation was unconstitutional. *Klein (Simpson),* 214 Ariz. at 208–09, 150 P.3d at 781–82. Based on the reasoning in *Roscoe* and *Klein (Simpson),* this Court concludes the $10,000 limitation of A.R.S. § 28–672(G) is unconstitutional.

Defendant also raises the issue whether the $10,000 limit is per accident or per victim. Because this Court has held the $10,000 limit to be unconstitutional, this Court considers that issue moot.

D. *Did the trial court err in awarding restitution to those persons or entities that provided medical and other assistance to the persons Defendant injured.*

Defendant contends the trial court erred in awarding restitution to persons and entities other than Nicholas Buzzell and Brittany Monahan. The Arizona courts have upheld awards of restitution to persons or entities other than the actual victim if those persons or entities suffered a loss because of the injury the defendant did to the victim. *State v. Spears,* 184 Ariz. 277, 291–92, 908 P.2d 1062, 1076–77 (1996) (restitution to family for travel and funeral expenses, and for attorney's fees incurred to close victim's estate); *State v. Lopez,* 174 Ariz. 131, 140, 847 P.2d 1078, 1087 (1992) (restitution to hospital for expenses occurred in trying to save victim that defendant had beaten); *State v. Guilliams,* 208 Ariz. 48, 90 P.3d 785, ¶¶ 9–15 (Ct. App. 2004) (restitution to Arizona Department of Corrections as result of defendant's escape); *State v. Madrid,* 207 Ariz. 296, 85 P.3d 1054, ¶¶ 10–13 (Ct. App. 2004) (restitution for travel expense and per diem allowance to victim's children for voluntary attendance at murder trial); *In re Ryan A.,* 202 Ariz. 19, 39 P.3d 543, ¶¶ 26–32 (Ct. App. 2002) (restitution to victim's father and mother for attendance disposition hearing); *State v. Blanton,* 173 Ariz. 517, 520, 844 P.2d 1167, 1170 (Ct. App. 1992) (restitution to victim's parents for funeral expenses); *Blanton,* 173 Ariz. at 519–20, 844 P.2d at 1169–70 (restitution paid to insurance company that had settled wrongful death claim brought by victim's children); *State v. Morris,* 173 Ariz. 14, 16, 839 P.2d 434, 436 (Ct. App. 1992) (restitution to insurance company for damage to automobile); *State v. Prieto,* 172 Ariz. 298, 299, 836 P.2d 1008, 1009 (Ct. App. 1992) (restitution to Arizona Department of Economic Security for victim's psychological evaluation and counseling); *State v. Reynolds,* 171 Ariz. 678, 680–81, 832 P.2d 695, 697–98 (Ct. App. 1992) (restitution to insurance company for damage to automobile); *State v. Merrill,* 136 Ariz. 300, 301–02, 665 P.2d 1022, 1023–24 (Ct. App. 1983) (restitution to insurance company for loss it incurred in reimbursing victim for property defendant stole). This Court concludes the trial court's restitution orders in the amounts and to the recipients are consistent with the above examples. The trial court therefore did not err in its award of restitution.

III. CONCLUSION.

Based on the foregoing, this Court concludes (1) this Court does not have jurisdiction to resolve these issues on direct appeal, (2) this Court has the jurisdiction and the discretion to resolve these issues by means of a special action, (3) the $10,000 limit contained in A.R.S. § 28–672(G) is unconstitutional, and (4) the trial court properly awarded restitution to persons and entities who provided medical and other assistance to the persons Defendant injured.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT 033120141220

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